



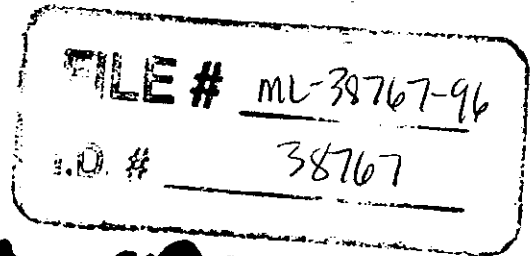
Texas State Board of Medical Examiners

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April 17, 1996

Honorable Dan Morales
Attorney General of Texas
P.O. Box 12548
Austin, Texas 78711-2548

RECEIVED
APR 23 1996
Opinion Committee



RR-890

Re: Opinion Request - Hyperbaric Oxygen and authority of Texas State Board of Medical Examiners

Dear General Morales:

An Attorney General Opinion is respectfully requested under the authority of the Section 22 of Article IV of the Texas Constitution and Sections 402.041 through 402.045 of the Texas Government Code. An opinion is requested concerning the authority of the Texas State Board of Medical Examiners ("the Board") to define hyperbaric oxygen therapy as the practice of medicine and to regulate such therapy through rule-making.

The enabling statute for the Texas State Board of Medical Examiners is the Medical Practice Act ("the Act"), Tex. Rev. Civ. Stat. Ann., article 4495b (Vernon Supp. Pamphlet 1996). The definition of the practice of medicine is set forth in broad language under section 1.03 of the Act. The general powers and duties of the Board are delineated in section 2.09 of the Act, which specifically provides the Board with authority to make rules and regulations which are not inconsistent with the Act as necessary to govern its own proceedings, perform its duties, regulate the practice of medicine in Texas, and enforce the Act.

The Board has been requested to make a determination as to whether the performance of hyperbaric oxygen therapy constitutes the practice of medicine. Questions have arisen as to the Board's authority to render such a determination and the extent of Board regulatory authority in the event that the Board concludes that hyperbaric oxygen therapy is the practice of medicine. The letter which has in part prompted this request is attached for background information regarding hyperbaric oxygen therapy and some related concerns. Your attention is invited to Attachment A.

It is requested that the following questions be specifically addressed in an Attorney General Opinion:

- (1) Does the Texas State Board of Medical Examiners ("the Board") have authority to make a determination that hyperbaric oxygen therapy is the practice of medicine within the statutory definition of the Medical Practice Act?
- (2) If the Board concludes that hyperbaric oxygen therapy is the practice of medicine as defined by the Medical Practice Act, does the Board have the regulatory authority to make rules delineating the parameters for the performance of such therapy?
- (3) If hyperbaric oxygen therapy is the practice of medicine and subject to the rule-making and regulatory authority of the Board, is the Board's authority broad enough to permit rules which include limitations on physician delegation of the performance of such therapy and the necessary supervision when delegation is made to other health care practitioners and nonphysicians?
- (4) Is the administration of hyperbaric oxygen therapy within the scope of independent practice of a licensed Texas podiatrist?

An opinion which addresses these questions is requested. If additional information is needed please contact either me or the Board's General Counsel, Tim Weitz.

Respectfully,


Bruce A. Levy, M.D., J.D.
Executive Director

xc: Allen Hymans
Executive Director
Texas State Board Podiatric Examiners
P.O. Box 12216
Austin, Texas 78711

Mr. Ace Pickens
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CERTIFIED MAIL - RETURN RECEIPT REQUESTED

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February 15, 1996

Bruce A. Levy, M.D.
Executive Director
Texas State Board of Medical Examiners
P.O. Box 149134
Austin, Texas 78714-9134

Re: Hyperbaric Oxygen Therapy; Practice of Medicine

Dear Dr. Levy:

My client, Blue Cross Blue Shield of Texas, Inc. (BCBST), is the administrator for the Medicare program in Texas. As such, it is called upon to make determinations as to appropriate reimbursement for medical and health care services rendered to Medicare recipients.

Currently, CPT Code 99183 is utilized for physicians to obtain reimbursement for attendance and supervision of hyperbaric oxygen therapy provided in a hyperbaric oxygen treatment facility. This code is currently limited to physicians licensed to practice medicine.

BCBST has recently been asked to reimburse other health care professionals, including podiatrists, under this code. The specific fact situation we are concerned about is attached.

BCBST has been advised by outside experts, including the Undersea and Hyperbaric Medical Society that the services included in the above CPT code are considered the practice of medicine.

The Health Care Financing Administration (HCFA) takes the position that what is the practice of medicine is controlled by the law in the state where the claim is made.

In view of the above, BCBST is placed in a position of desiring to comply with the applicable laws but is in doubt as to whether or not the above practice is or is not the practice of medicine.

Bruce A. Levy, M.D.
February 15, 1996
Page 2

Therefore, we would respectfully request of the Board that it advise BCBST whether the above is within the practice of medicine or seek an Attorney General's opinion as to same.

If you should need additional information, we would be pleased to provide same.

Respectfully,

A handwritten signature in cursive script that reads "Ace Pickens". The signature is written in dark ink and is positioned above the printed name.

Ace Pickens

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Enclosure

FACTS

Hyperbaric oxygen therapy is a treatment in which a patient breathes 100% oxygen while exposed to increased atmospheric pressures in a treatment chamber. The treatment in most cases is administered once daily. The patient usually receives 90 minutes of oxygen at 2.4 atmospheres absolute pressure for most indications (emergency treatment will vary depending on clinical indications/diagnosis). The multiplace chamber permits a physician or hyperbaric staff member to be with the patient during the treatment to provide hands-on care. Capabilities for critically ill patients should include mechanical ventilation, non-invasive monitoring and intravenous drips. Therapy is given on an outpatient basis whenever possible.

Indications for hyperbaric oxygen include soft tissue infections in the compromised host (e.g. diabetes mellitus) refractory chronic osteomyelitis including refractory osteomyelitis in the diabetic foot, preparation for skin grafts and flaps, radiation damaged bone and soft tissue (e.g. osteoradionecrosis, radiation cystitis), preparation of irradiated soft tissue for grafting, progressive dermal gangrene, brown recluse spider bites, malignant external otitis (pseudomonas osteomyelitis of temporal bone and mastoid), acute traumatic ischemias (e.g. crush injuries, compartment syndromes), acute arterial insufficiency, necrotizing fasciitis and necrotizing soft tissue infections (e.g. Fournier's gangrene), gas gangrene, carbon monoxide poisoning, arterial gas embolism and decompression sickness (the bends).

Hyperbaric medicine generally contains several essential components beginning with patient assessment, with close attention to the cardiovascular, respiratory and central nervous system, the ears and the paranasal sinuses. Also required are the skills necessary for administration of a patient treatment, but these are not limited to the mechanical aspects of chamber operation. They also include management of the complications such as otic barotrauma, pulmonary barotrauma, including pneumomediastinum, tension pneumothorax and atrial gas embolism. These would require assessment of the middle ears and sinuses and administering appropriate treatment for otic and sinus barotrauma, management of cardiopulmonary resuscitation, including placement of a chest tube, and management of oxygen toxicity manifest as hyperoxic convulsions. These complications are usually sudden and unpredictable.

Currently CPT Code 99183 relates to physician attendance and supervision of hyperbaric oxygen therapy, per admissions [evaluation and management services and/or procedures (e.g. wound debridement) provided in a hyperbaric oxygen treatment facility in conjunction with a hyperbaric oxygen therapy session should be reported separately].

Certain other licensed persons, including podiatrists, are now billing or are requesting to be paid or reimbursed under the above CPT code. These persons intend to or are not planning to have a physician in attendance to supervise or perform any services related to physician attendance and supervision of hyperbaric oxygen therapy to patients who receive hyperbaric oxygen therapy at the site of the hyperbaric oxygen chamber.